

§ 3.1008

which a check was issued and the veteran died before negotiating the check.

(Authority: 38 U.S.C. 5503)

[39 FR 30349, Aug. 22, 1974, as amended at 66 FR 48561, Sept. 21, 2001; 68 FR 34543, June 10, 2003]

§ 3.1008 Accrued benefits payable to foreign beneficiaries.

In case of death of the payee of any check in payment of periodic monetary benefits (other than insurance and servicemembers' indemnity) accruing under laws administered by the Department of Veterans Affairs, while the amount thereof remains in the special deposit account established by Pub. L. 828, 76th Congress, such amount will be payable under section 3 of that act. (31 U.S.C. 125) However, the accrued amount will be payable only if the person on whose behalf checks were issued and the person claiming the accrued amount have not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies.

[26 FR 1609, Feb. 24, 1961]

§ 3.1009 Personal funds of patients.

The provisions of this section are applicable to gratuitous benefits deposited by the Department of Veterans Affairs either before, on, or after December 1, 1959, in a personal funds of patients account for an incompetent veteran who was incompetent at the date of death. Where the veteran died after November 30, 1959:

(a) *Eligible persons.* Gratuitous benefits shall be paid to the living person first listed as follows:

(1) His or her spouse, as defined in § 3.1000(d)(1);

(2) His or her children (in equal shares), as defined in § 3.57 but without regard to their age or marital status;

(3) His or her dependent parents (in equal shares) as defined in § 3.59 or the surviving parent, provided that the parent was dependent within the meaning of § 3.250 at the date of the veteran's death.

(4) In all other cases, only so much may be paid as may be necessary to re-

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imburse a person who bore the expense of last sickness or burial. (See § 3.1002.)

(Authority: 38 U.S.C. 5502(d))

(b) *Claim.* Application must be filed with the Department of Veterans Affairs within 5 years after the death of the veteran. If, however, any person otherwise entitled is under legal disability at the time of the veteran's death, the 5-year period will run from the date of termination or removal of the legal disability.

(1) There is no time limit for the submission of evidence.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.

[27 FR 5539, June 12, 1962, as amended at 28 FR 10487, Sept. 28, 1963; 39 FR 30349, Aug. 22, 1974]

§ 3.1010 Substitution under 38 U.S.C. 5121A following death of a claimant.

(a) *Eligibility.* If a claimant dies on or after October 10, 2008, a person eligible for accrued benefits under § 3.1000(a) listed in 38 CFR 3.1000(a)(1) through (5) may, in priority order, request to substitute for the deceased claimant in a claim for periodic monetary benefits (other than insurance and servicemembers' indemnity) under laws administered by the Secretary, or an appeal of a decision with respect to such a claim, that was pending before the agency of original jurisdiction or the Board of Veterans' Appeals when the claimant died. Upon VA's grant of a request to substitute, the substitute may continue the claim or appeal on behalf of the deceased claimant for purposes of processing the claim or appeal to completion. Any benefits ultimately awarded are payable to the substitute and other members of a joint class, if any, in equal shares.